

AGREEMENT

This Agreement is made and entered into this 31st day of August, 1999, by and between the County of San Bernardino, hereafter referred to as "County" and Human Resources Strategies, hereafter referred to as "Consultant."

SECTION 1. SCOPE OF SERVICES. Consultant will review, analyze and recommend revisions to County ordinances, policies and procedures related to the requisition, procurement of and payment for goods and services in order to reflect greater accountability and best business practices.

SECTION 2. DELIVERABLES. Consultant will provide the following deliverables:

1. An Executive Summary itemizing the Key Findings and Recommendations.
2. A flow chart of existing processes and how these processes may be revised to enhance efficiency, control and accountability.
3. Identification of known requirements or existing projects at the department or other levels that may impact Purchasing workload, staffing, or procedures.
4. An evaluation of the existing tracking, monitoring and reporting systems as related to the procurement and payment for goods and services; and key findings and recommendations regarding these systems.
5. Staffing recommendations based upon future anticipated trends and identification of existing backlogs or workload reductions.
6. Discussion, identification and analysis of departmental responsibilities as related to the procurement of goods and services.
7. A summary of current trends in governmental and other entities regarding purchasing best practices and how these entities approached the issues of accountability and control mechanisms.
8. Development of reiteration of a global County policy statement identifying the level of control desired by the key policy makers and departmental representatives.
9. A detailed review of County ordinances and procedures in light of the above policy to ensure the enhancement and support of the stated policy objectives. Key findings and detailed recommendations for the revision of ordinances and procedures will be included.
10. An attachment to the report will include recommended policies, procedures, and ordinances prepared and ready for adoption by the Board of Supervisors. Some assistance on the part of County Counsel may be required in the drafting of the ordinances.
11. Development of an implementation plan, with specific tasks, assignment of responsibilities and timeframes.
12. Discussion of the contract management function, including options regarding contract management and recommendations regarding the most efficient manner to monitor contracts.

13. An analysis to determine if a contract management unit is recommended and, if recommended, the best organizational placement and level of staffing required for the unit.
14. Cost/benefit analysis as agreed upon.

SECTION 3. CONSULTANT RESPONSIBILITIES.

- A. In addition to the provision of the Deliverables identified in Section 2 above, and as part of the Scope of Services identified in Section 1 above, Consultant will work with a working group and will work with certain departments within the County as established by the County Administrative Office.
- B. Consultant will appear at meetings of the County Board of Supervisors, as requested by the County Administrative Office, to provide updates as to the progress of the scope of work and in connection therewith, will provide written executive summaries (if requested by the County Administrative Office) for distribution to the members of the Board of Supervisors.
- C. Consultant will allow reasonable response time when requesting information from County personnel.

SECTION 4. COUNTY RESPONSIBILITIES.

- A. County personnel will respond to requests from Consultant for information in a reasonable amount of time, which for purposes of this Agreement, is deemed to be ten (10) days. In the event a response requires additional time, Consultant will be informed in writing.
- B. County will review any deliverables submitted by Consultant within a reasonable time frame, taking into consideration Consultant's timelines and schedule.

SECTION 5. TERM OF AGREEMENT. Consultant shall commence work beginning September 1, 1999 and the scope of work will be completed by January 15, 2000, unless a later date is mutually agreed upon by both parties. Either party may terminate this Agreement upon thirty (30) days' written notice.

SECTION 6. COMPENSATION. For the performance of services under this Agreement, County agrees to pay Consultant an amount not to exceed \$28,000. Consultant will be paid \$2,000 upon execution of this Agreement. Thereafter, Consultant will be paid three monthly payments of \$7,000 and one final payment of \$5,000. Along with a detailed invoice, Consultant will submit a status report of progress made for the period of time covered by the invoice.

SECTION 7. PROJECT CHANGES AND EXTRA SERVICES. County may direct changes in the scope of the work, timelines and deliverables called for in this

Agreement. Services not within the terms of this Agreement shall not be rendered by Consultant unless such extra services and compensation are first authorized in writing by County.

SECTION 8. CONTRACT REPRESENTATIVES. The Assistant County Administrative Officer (Carol Shearer) shall represent the County and Briana Lane shall represent Consultant in all matters pertaining to the services rendered under this Agreement.

SECTION 9. BREACH OF CONTRACT. In the event that Consultant breaches any of the terms and conditions of this Agreement or fails to satisfactorily perform as determined by County, County shall give written notice of violation and demand correction. If within ten (10) days from receipt of written notice, Consultant has not corrected the violation or commenced to cure the violation, County has the right to immediately terminate this Agreement. Consultant would be entitled to receive compensation for services performed up to the date of receipt of notice of termination.

SECTION 10. RIGHTS TO DELIVERABLES. Upon full payment, Consultant hereby assigns to County any and all rights, title and interest, including, without limitation, copyrights, trade secrets and proprietary rights to the deliverables developed or prepared specifically for County hereunder (the "Deliverables"). The Deliverables exclude all third-party works and products whether or not included or embedded in the Deliverables. The Deliverables shall be deemed to be "works made for hire" under the federal copyright laws. Consultant agrees to give County reasonable assistance, at County's expense, to perfect such assignment of such rights, title and interest. However, the Deliverables may include data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices, and specifications ("Technical Elements") owned or developed by Consultant prior to, or independently from, the engagement hereunder and Consultant retains all rights thereto. Accordingly, to the extent that any Technical Elements are integrated into any Deliverables, Consultant hereby grants to County a perpetual limited license to use, copy and modify such Technical Elements as integrated into such Deliverables for internal County use only. Conversely, County grants to Consultant a perpetual license to use, copy and modify any Technical Elements developed hereunder in the course of Consultant's consulting services business. In addition, Consultant retains the right to use its knowledge, experience, and know-how, including processes, ideas and concepts and techniques developed in the course of performing the services under this Agreement.

SECTION 11. CONFIDENTIALITY.

A. Neither party shall disclose confidential information (as hereafter defined) of the other party. The receiving party shall use the same degree of care as it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the confidential information of the disclosing party. The foregoing obligations shall not apply to any information that (i)

is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party, (ii) is subsequently received from a third party that does not impose an obligation of confidentiality on the receiving party, (iii) was known to the receiving party at the time of disclosure, (iv) is generated independently by the receiving party, or (v) is required to be disclosed by law, subpoena or other process. The provisions of this Section 11 shall not limit any of the rights of the parties as set forth in Section 10.

- B.** For the purpose of this Section 11, confidential information shall mean any information identified by either party as “confidential” and/or “proprietary”, or which under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary.

SECTION 12. INSURANCE AND INDEMNIFICATION.

Indemnification - the Consultant agrees to indemnify, defend and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising from Consultant’s acts, errors or omissions and for any costs or expenses incurred by the County on account of any claim therefore, except where such indemnification is prohibited by law.

Insurance - Without in anyway affecting the indemnity herein provided and in addition thereto, the Consultant shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Worker’s Compensation - A program of Workers’ Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer’s Liability with \$250,000 limits, covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

Comprehensive General and Automobile Liability Insurance - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omissions Liability Insurance - Combined single limits of \$1,000,000 for bodily injury and property damage for \$3,000,000 in the aggregate or

Professional Liability - Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

Additional Named Insured - All policies, except for Workers’ Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional

named insureds with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights - Except for Errors and Omissions and Professional Liability, Consultant shall require the carriers of the above required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors.

Policies Primary and Non-Contributory - All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

Proof of Coverage - Consultant shall immediately furnish certificates of insurance to the County Department administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the Consultant shall furnish certified copies of the policies and all endorsements.

Insurance Review - The above insurance requirements are subject to periodic review by the County. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Consultant agrees to execute any such amendment within thirty (30) days of receipt.

Professional Services Contract Review

The above language shall be used for all other professional service contracts:

11-06 2.B.a-Rev. 6/95 & 9/95 From County Policy 11-06 & 11-06SP

SECTION 13. NOTIFICATION. All notices required to be given by the parties under this Agreement shall be given by personal delivery, ordinary United States mail (first

class postage prepaid), registered or certified mail, overnight delivery service, telegram or facsimile device. In the event a facsimile device is used, the notice must be immediately followed up by a hard copy of the notice. Notices will be considered received as follows:

- A. Notices or communications transmitted by ordinary, registered or certified United States mail will be considered received on the first working day after five (5) days following the day the transmittal is postmarked or following the day sworn in an affidavit to be the date the transmittal was deposited in a post office or an official depository.
- B. Notices or communications dispatched by overnight delivery service shall be considered received one (1) working day after having been dispatched.
- C. Transmissions by facsimile device or electronic means shall be considered received upon the receipt by the sending party or a signal from the equipment of the receiving party that the transmission was received.
- D. Notices or communications transmitted by personal delivery shall be considered received on the day the transmission is delivered to an agent of the receiving party.
- E. Any other transmissions shall be considered received no later than five (5) working days after transmission by the sending party.

Each party is responsible for notifying the other party of any changes of address or destination to which notices and communications should be sent and any changes in designated representatives.

The following are the addresses and contacts for purposes of this Agreement:

For County:

Carol Shearer
Assistant County Administrative Officer
County Government Center
385 North Arrowhead Ave., 4th Floor
San Bernardino, CA 92415-0120
(909) 387-5427

with a copy to:

Betsy Starbuck
Assistant Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018
(909) 386-8813

For Consultant:

Briana Lane
Director of Government Services
Human Resources Strategies
1531 Glenwood Way
Upland, CA 91786
(909) 946-3733

SECTION 14. SEVERABILITY. If any portion of this Agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the remaining portions of this Agreement shall remain in effect.

SECTION 15. ASSIGNMENT, DELEGATION AND SUBCONTRACTING. This Agreement is in the nature of personal services. Except as herein specifically provided otherwise, the duties and obligations of Consultant cannot be assigned, delegated or subcontracted except with the express prior written consent of the County. Subcontracts permitted by the County shall be subject to the requirements of this Agreement, and Consultant is responsible for all subcontracting arrangements and the delivery of services as set forth in this Agreement. Consultant shall be responsible for the performance of any subcontractor. Failure of the subcontractor to provide services in accordance with the requirements of this Agreement shall be the responsibility of Consultant. Consultant warrants and agrees that any subcontract resulting from its performance under the terms and conditions of this Agreement shall include a provision that the subcontractor shall indemnify and hold harmless the County.

SECTION 16. CHOICE OF LAW. This Agreement must be construed and its performance enforced under California law.

SECTION 17. COUNTERPARTS. This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one instrument.

SECTION 18. INTEGRATION. This Agreement including any exhibits or attachments constitutes the parties' entire agreement on this subject. There are no written or oral representations or understandings that are not fully expressed in this Agreement.

SECTION 19. NO WAIVER. The waiver of breach of any term of this Agreement does not waive any other breach of that or any other term.

SECTION 20. AMENDMENTS AND MODIFICATIONS. This Agreement may be modified only by written amendment executed by authorized officials or representatives of the parties. No alteration or modification of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties.

SECTION 21. CHILD SUPPORT COMPLIANCE PROGRAM. Consultant acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers. As required by County's Child Support Compliance Program (County Code Section 110.0101 et seq.) and without limiting Consultant's duty under this contract to comply with all applicable provisions of law, Consultant warrants that it is now in compliance and shall during the term of this contract maintain compliance with employment and wage reporting

requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b). Consultant hereby certifies that it has submitted to the County a completed Principal Owner Information (POI Form) and Child Support Compliance Program Certification (CSCP Certification).

Failure of Consultant to maintain compliance with the requirements set forth in the preceding paragraph shall constitute a default by Consultant under this contract. Without limiting the rights and remedies available to County under law or under any other provision of this contract, failure to cure such default within 90 days of notice by the San Bernardino County District Attorney shall be grounds upon which the County Board of Supervisors may terminate this contract.

COUNTY OF SAN BERNARDINO

HUMAN RESOURCES STRATEGIES

Jon D. Mikels, Chairman
Board of Supervisors
County of San Bernardino

Briana Lane, Director
Government Services
Human Resources Strategies

Dated:_____

Dated:_____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF THE BOARD

Clerk of the Board of Supervisors of the County of San Bernardino

By _____
Deputy